

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 13, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-2493

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

MONTEL HORTON,

Petitioner-Appellant,

v.

**GARY MCCAUGHTRY,
LYNN OESTREICH and
PATRICIA GARRO,**

Defendants-Respondents.

APPEAL from an order of the circuit court for Dane County:
MICHAEL N. NOWAKOWSKI, Judge. *Affirmed.*

Before Eich, C.J., Dykman and Sundby, JJ.

PER CURIAM. Montel Horton appeals from an order granting defendants' motion to dismiss Horton's complaint. Because we conclude that Horton's suit is barred by *res judicata* (also known as claim preclusion), we affirm.

STANDARD OF REVIEW

On review of a summary judgment order, we adopt the same methodology as the trial court; our review is therefore *de novo*. *Reel Enters. v. City of La Crosse*, 146 Wis.2d 662, 667, 431 N.W.2d 743, 746 (Ct. App. 1988).¹ Under § 802.08(2), STATS., we must determine whether a genuine issue exists as to any material fact. On summary judgment, the court does not decide issues of fact; it determines whether there is a genuine issue of fact. *Grams v. Boss*, 97 Wis.2d 332, 338, 294 N.W.2d 473, 477 (1980). Where, as here, both parties move for summary judgment, the court may assume there is no dispute as to the facts. *Powalka v. State Mut. Life Assurance Co.*, 53 Wis.2d 513, 518-19, 192 N.W.2d 852, 854 (1972) ("[T]he practical effect of the bilateral summary judgment motions was the equivalent of a stipulation as to the facts.").

BACKGROUND

Horton, an inmate in the Wisconsin Correctional System, was placed in program segregation. Inmates may reduce their segregation time by successfully participating in the "step program." Shortly before Horton was to be released on the accelerated step program deadlines, he was informed that he was on "no step" status, and would accordingly have to serve his entire segregation time.

He responded by filing a petition for writ of *habeas corpus*. In that petition, he alleged that he had been placed in the step program, that he had successfully completed each month's review, but that he was not released from segregation notwithstanding his protected liberty interest in "not ... be[ing] so restrained." The circuit court for Dodge County quashed the writ on the grounds that Horton had no constitutionally protected liberty interest in early release from segregation under the step program.

¹ Thus, although we conclude below that the trial court came to the right result for the wrong reason, *de novo* review renders the trial court decision essentially moot.

While the *habeas* petition was pending, Horton also filed a 42 U.S.C. § 1983 action in Dane County Circuit Court again alleging that he had satisfactorily completed the various steps, and that his constitutional rights to release were violated by his subsequent "no step" status. He also alleged that he was subject to cruel and unusual punishment by being held in segregation. However, Horton moved to voluntarily dismiss on the grounds the Dodge County action barred his § 1983 action on *res judicata* (claim preclusion) grounds. The motion was granted.

Horton then commenced this appeal. He alleges that he was placed in the step program, that he successfully completed each month's review, that his constitutional rights were violated by his continued segregation status, and that he was subjected to cruel and unusual punishment.

Defendants moved to dismiss this case on the grounds that the Dodge County *habeas* decision constituted *res judicata* (claim preclusion). *See Allen v. McCurry*, 449 U.S. 90, 94 (1980). The circuit court, however, dismissed this case on the grounds of collateral estoppel (also known as issue preclusion). *See id.* Collateral estoppel (issue preclusion) is narrower than *res judicata* (claim preclusion): It bars relitigation of issues which have previously been litigated; by contrast, *res judicata* (claim preclusion) bars litigation of all claims that were or *could have been* asserted in previous litigation. *Lindas v. Cady*, 183 Wis.2d 547, 558-59, 515 N.W.2d 458, 463 (1994).

ANALYSIS

The circuit court dismissed this case on the grounds that the Dodge County case constituted collateral estoppel (issue preclusion). The court was only partially right. Although Horton claimed certain constitutional deprivations in his Dodge County *habeas* action, he added another claim in this case for the first time, an eighth amendment claim for cruel and unusual punishment. In addition, the identity of the parties differs. Nevertheless, if the trial court came to the right result, but for the wrong reason, we will affirm. *State v. Holt*, 128 Wis.2d 110, 124, 382 N.W.2d 679, 687 (Ct. App. 1985). Stated otherwise, we may affirm the judgment or order of the trial court if supported by the record. *State v. Alles*, 106 Wis.2d 368, 391, 316 N.W.2d 378, 388 (1982).

The record here clearly demonstrates that Horton brought a previous action in Dodge County, challenging by petition for *habeas corpus*, his "no step" status, and alleging violation of constitutional rights. Horton demonstrates no reason why all his allegations of constitutional violation could not have been brought in that action. Further, Horton himself admits that subsequent claims are barred by *res judicata* (claim preclusion). Specifically, he voluntarily dismissed a 42 U.S.C. § 1983 action on the grounds that it was barred under *res judicata* (claim preclusion).² Further, Horton also demonstrates no reason why the parties to this suit should not have been included in his *habeas* filing.

In sum, the trial court correctly concluded that this case was barred, although it did so for partially incorrect reasons. We affirm because the record supports the trial court disposition. See *Alles*, 106 Wis.2d at 391, 316 N.W.2d at 388.³ Horton could have, and should have, brought all his claims in his first action. Failure to do so results in a *res judicata* (claim preclusion) bar to the present action.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

² Although that admission led to a dismissal without prejudice, this is irrelevant. Horton admitted, correctly, that his claim was barred.

³ Because we dispose of the case on these grounds, we need not consider Horton's further arguments regarding his alleged liberty interest in the step program, or his allegations of eighth amendment violation. See *Sweet v. Berge*, 113 Wis.2d 61, 67, 334 N.W.2d 559, 562 (Ct. App. 1983).